Zango Inc v. PC Tools Pty Ltd Doc. 8

THE HONORABLE JAMES P. DONOHUE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ZANGO, INC., Plaintiff, v. PC TOOLS PTY, LTD., Defendant.	No. CV-07-0797 JPD DECLARATION OF KELLY CORR

Kelly Corr states and declares as follows:

1. I am an attorney representing plaintiff Zango, Inc. ("Zango") in the above captioned matter. I have personal knowledge of the matters stated herein and I am competent to testify to these matters.

2. Zango filed a Complaint against defendant PC Tools Pty Ltd. ("PC Tools") in King County Superior Court on May 15, 2007.

3. On Wednesday, May 16, 2007 at approximately 7:50 p.m., Steve Fogg, an attorney in our firm, provided notice via email to general counsel for PC Tools of Zango's intention to move for a temporary restraining order in the ex parte department of King County

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Superior Court the following day, Thursday, May 17. A copy of the email sent by Mr. Fogg is attached hereto as Exhibit A.

4. Zango subsequently delayed seeking a TRO based upon assurances received from PC Tools' counsel changes would be made to avoid additional damage. When those assurances proved inadequate, Mr. Fogg provided notice to PC Tools on May 22, 2007, of Zango's intention to seek a TRO in King County Superior Court on May 23. A copy of the email sent by Mr. Fogg is attached hereto as Exhibit B. PC Tools again represented that the damage being done to Zango would be remedied. On May 24, 2007, I personally sent an email to PC Tool's counsel stating that Zango's intention was to seek a TRO later that day. A copy of that email is attached hereto as Exhibit C. However, on May 24, 2007, PC Tools removed the case to this Court without providing prior notice to Zango of their intention to do so.

5. PC Tools has thus had notice of Zango's intention seek immediate injunctive relief for over a week. According to our client, Zango is losing substantial revenue and numerous customers daily. Accordingly, Zango respectfully requests immediate relief.

DATED this 25th day of May, 2007.

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP

[signature]

Kelly P. Corr, WSBA #00555
Steven W. Fogg, WSBA #23528
Attorneys for Plaintiff
Zango, Inc.

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CERTIFICATE OF SERVICE

The undersigned declares as follows:

I am employed at Corr Cronin Michelson Baumgardner & Preece LLP, attorneys of record for Plaintiff Zango, Inc. herein.

I hereby certify that on May 25, 2007, I electronically filed the attached foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following persons:

J. Ronald Sim
Maren R. Norton
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101-3197

and I hereby certify that I have delivered via U.S. Mail the document to the following non CM/ECF participants:

N/A

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 25 day of May, 2007, at Seattle, Washington.

Joyce Abraham

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EXHIBIT A

Colgan, Seann

From: Fogg, Steven
Sent: Wednesday, May 16, 2007 7:51 PM
To: mhelmer@pctools.com
Cc: Corr, Kelly
Subject: Zango vs. PC Tools: Notice of TRO Hearing

Mr. Helmer:

Having heard nothing substantive from you in response to our cease-and-desist letter, our complaint and our e-mail proposal of this moring, and given the ongoing, extensive and daily harm your company's product is wrongfully inflicting upon my client's products, we have no choice but to seek immediate injunctive relief from King County Superior Court. Because Judge Carey is unavailable to schedule a TRO this week, we intend to seek a TRO from the ex parte department tomorrow afternoon (5/17/07) at 2:30 p.m.. The ex parte department is located at the King County Courthouse, 516 Third Avenue, Seattle, WA 98154. We are in the process of preparing our moving papers and (as we did with the complaint) we will send you a courtesy copy via e-mail upon filing. In addition, we have set a preliminary injunction hearing before Judge Carey on Monday morning (5/21/07) at 8:30 a.m..

Please call or e-mail me if you wish to discuss these matters further.

Steve Fogg
sfogg@corrcronin.com
206-274-8669 (o)

EXHIBIT B

Colgan, Seann

From: Fogg, Steven
Sent: Tuesday, May 22, 2007 5:22 PM
To: Tarek Saad
Cc: Corr, Kelly
Subject: Notice of TRO Hearing

Tarek, as we have discussed, my client continues to be irreparably harmed by the version of Spyware Doctor (v. 5.0.0.184) that is currently available as part of the Google Pack. Although on Friday the 18th your client briefly made a more tolerable version of Spyware Doctor (v.5.0.0.185) available on the Google Pack site (causing my client to agree to delay our scheduled hearing seeking injunctive relief), within just a few hours your client reverted to the 184 version that continues to damage my client's products. I have had several conversations with you since Friday regarding the damage that we're seeing due to the 184 version, and you assured me yesterday that your client said the 184 version would be replaced by the 185 version "imminently". Nevertheless, more than a full day after our conversation, version 184 remains in place on the Google Pack web site.

Version 184 of your client's product is causing Zango to suffer significant reputational and financial harm (and loss of customers) on a daily basis. For this reason, we have no choice but to pursue the injunctive relief that we scheduled last week, but delayed based on your client's assurances. Accordingly, we intend to seek a TRO from the ex parte department tomorrow afternoon (5/23/07) at 3:30 p.m.. The ex parte department is located at the King County Courthouse, 516 Third Avenue, Seattle, WA 98154. We are in the process of preparing our moving papers and (as we did with the complaint) we will send you a courtesy copy via e-mail upon filing.

Please call or e-mail me or Kelly Corr (who will be arguing the motion) if you wish to discuss these matters further.

Steve Fogg

Steven W. Fogg
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EXHIBIT C

Colgan, Seann

From: Corr, Kelly
Sent: Thursday, May 24, 2007 1:00 PM
To: Colgan, Seann
Subject: FW: Just checking in

From: Corr, Kelly [mailto:kcorr@corrcronin.com]
Sent: Thursday, May 24, 2007 1:12 PM
To: Tarek Saad; Fogg, Steven
Subject: RE: Just checking in

1. While we appreciate the email you sent, it was not what was requested--proof from your client's file (ie their email) or your client's declaration re 185 going to Google.
2. We have no protection going forward as to 185 remaining; where is your redraft of our order that I thought you were sending? and
3. What about all the people out there with versions prior to 185 who still can not get Zango products? You need to delete Zango from your detection data base. Accordingly we still plan to go to court today at 3:30 to get a TRO.
Kelly

From: Tarek Saad [mailto:TFSaad@hollandhart.com]
Sent: Thursday, May 24, 2007 11:39 AM
To: Fogg, Steven
Cc: Corr, Kelly
Subject: Just checking in